IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITON NO.6100 OF 2005

M/s.Gem Nuts Products Co.Pvt.Ltd. ..Petitioner.

V/s.

The Union of India & Anr. ..Respondents.

Mr.Prakash Shah with Bharat Raichandani i/b. M/s.PDS Legal for petitioner.

Mr.A.J.Rana, senior counsel with P.S.Jetly & Y.R. Mishra i/b. Dr.T.C.Kaushik for respondents.

CORAM : V.C. DAGA AND J.P.DEVADHAR, JJ.

DATED : 28TH SEPTEMBER, 2005.

P.C. :-

1. Rule, returnable forthwith.

2. Mr.A.J.Rana, senior counsel waives service for the respondents.

3. Heard finally by the consent of the parties. Perused petition with relevant documents.

4. Petitioner in this petition is seeking directions to the Assistant Commissioner of Customs (Refunds), Mumbai to disposed of the refund claim filed by the petitioner claiming refund in the sum of Rs.45,46,500/- along with interest at the rate of 14%

from the date of deposit i.e. 4/10/1999 till actually recovery.

5. On being noticed, the respondents appeared and filed their counter affidavit duly sworn by the Assistant Commissioner of Customs, special investigation and intelligence Branch and placed on record along with copy of the Misc. application No.C-II/1271/WZB/2003 dated 09/06/200 to seek stay of the operation of the order passed by CESTAT mentioning therein that the Reference Application arising out of 9/6/2003 order is pending before the High Court for consideration on merits.

6. The prayer in the above Misc.Application before CESTAT is to stay the effect and operation of its order dated 9/6/2003 till the outcome of the Reference Application No.41 of 2003 pending before this Court. In this view of the matter, learned counsel for the Revenue submits that the present petition seeking early disposal of the refund application moved by the petitioner is premature as such it is liable to be dismissed.

7. Per contra, learned counsel appearing for the petitioner submits that the Assistant Commissioner of Customs (Refund) can be directed to process their

refund claim pending consideration of the stay application moved by the Revenue which will not cause any prejudice to Revenue.

8. In rejoinder, Mr.Rana, learned counsel appearing for the Revenue submits that no useful purpose would be served by issuing directions sought against the Assistant Commissioner of Customs (Refund) so long as their application seeking stay is not decided by the Tribunal on its own merits, hence no directions as sought by the petitioner be issued.

9. Having heard the rival parties, without going into the intricate factual matrix of the case, this petition can be disposed of by fixing time schedule with directions to both the authorities to dispose of the respective applications pending before them. In that view of the matter, we issue following directions:-

i) The CESTAT shall dispose of the application filed by the Revenue seeking stay of the order dated 9/6/2003 within a period of 3 weeks from the date of this order.

ii) The Assistant Commissioner of Customs (Refund) shall decide the application seeking refund

(incorporated at Exhibit-I of this petition) within 10 weeks thereafter.

iii) The Assistant Commissioner of Customs (Refund) while deciding the application for refund shall consider the order passed by the Tribunal on the application for stay. In the event of grant of stay by the Tribunal in favour of the Revenue, the Assistant Commissioner of Customs (Refund) shall stay the proceedings for refund pending before it.

iv) In the event the order of the Tribunal and / or Assistant Commissioner of Customs (Refund) is adverse to the Revenue, it would be open to the Revenue to challenge that order in the appropriate forum. In that event the order of the appropriate higher forum shall hold the field.

10. All rival contentions of the parties are kept open.

11. In this view of the order, petition stands disposed of. No further orders are necessary. Accordingly, Rule is made absolute with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)